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17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

19 **TARGETSAFETY.COM, INC., a California**
20 **corporation,**

21 **Plaintiff,**

22 **v.**

23 **CONTINUING EDUCATION COORDINATING**
24 **BOARD FOR EMERGENCY MEDICAL**
25 **SERVICES, INC., a Missouri non-profit corporation**
26 **and DOES 1-10,**

27 **Defendants.**

Case No.: 08-CV-0994-JLS-JMA

MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION AND TEMPORARY
RESTRAINING ORDER

Complaint Filed: June 4, 2008

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1 **I. SUMMARY OF OPPOSITION**

2 This Declaration is submitted by Continuing Education Coordinating Board for Emergency
3 Medical Services, Inc. (hereinafter "CECBEMS") in opposition to TargetSafety.com, Inc.'s
4 (hereinafter "TargetSafety") request for a temporary restraining order and preliminary injunction.
5 Only TargetSafety's third and fourth causes of action seek injunctive relief.

6 Injunctive relief is not warranted for the following reasons, which are explained more fully
7 below.

8 First, the issue is neither ripe nor appropriate for judicial review because CECBEMS has not
9 voted to revoke the accreditation of TargetSafety and has not even initiated the process for doing so.
10 Should the CECBEMS Board of Directors vote to revoke the accreditation, TargetSafety will have
11 the full opportunity to participate in an appeals process. The appeals policy (Exhibit 3 to Plaintiff's
12 Verified Complaint) dictates that no revocation will be effectuated and no accreditation will be lost
13 until at least sixty (60) days after TargetSafety is noticed of the revocation decision. Any ruling by
14 the Court on the merits would be an improper advisory opinion on a matter not yet before the Court.

15 Second, monetary relief is available to TargetSafety and is easily calculable. Therefore, the
16 preliminary injunction should be denied.

17 Third, federal case law is clear that the Court must afford "great deference" to the rationale
18 of an accreditation agency's decision. The Court should not "guess" at to what CECBEMS'
19 rationale for revoking "might" be in the future. Doing so would improperly substitute the opinion of
20 the Court for that of the accrediting agency.

21 Fourth, TargetSafety has failed to allege any basis for its claim of irreparable injury.
22 TargetSafety suggests that it will lose business if it loses its accreditation with CECBEMS because
23 some states accept CECBEMS accreditation as a basis for approval of programs. This does not
24 create or even suggest any harm, particularly harm that is irreparable. Each state provides its own
25 methods of approval. TargetSafety has only alleged that it was "informed and believes" that one
26 unnamed medical director from one unnamed location might only accept CECBEMS accreditation.
27 This is hardly the basis for "irreparable injury". Moreover, the Infectious Disease Control Course at
28 issue has only been completed seventy-two (72) times since March 2007. Losing accreditation of

1 this course will hardly result in irreparable injury. Additionally, the mere loss of revenues is by
2 definition not irreparable injury. By definition, it is only about money.

3 Fifth, the Third Cause of Action seeks an injunction which prevents CECBEMS from ever
4 withdrawing or revoking accreditation for any reason whatsoever. This is a gross overreach, and far
5 beyond either the merits of the dispute or the jurisdiction of the Court. This Court should not tie the
6 hands of an accrediting agency to enforce its rules, standards and policies. The request is simply
7 overbroad and would permit the TargetSafety to violate any and all rules of CECBEMS without
8 recourse by CECBEMS from this date forward. For instance, TargetSafety could stop paying the
9 fees required to CECBEMS without recourse. We also note that TargetSafety's accreditation expires
10 after a three year term. A permanent or even a preliminary injunction would permit TargetSafety to
11 avoid having to reapply for accreditation, just as every other accredited entity must do.

12 Sixth, the Third Cause of Action also requests an injunction requiring CECBEMS to accredit
13 courses still under review for accreditation. This request asks this Court to become the accrediting
14 agency and destroys the professional discretion of CECBEMS in determining whether accreditation
15 should be granted. Courts may not exercise the professional judgment reserved to the accrediting
16 agencies. CECBEMS must be permitted to create and enforce its own rules and standards. An
17 injunction forcing CECBEMS to accredit pending applications prevents CECBEMS from improving
18 its standards and enforcing those standards. This erodes the accreditation process as a whole.

19 **A. ABOUT CECBEMS**

20 CECBEMS is a not-for-profit corporation formed under the laws of the state of Missouri.

21 CECBEMS was chartered in 1992 by the following sponsoring organizations:

- 22 • American College of Emergency Physicians (ACEP),
- 23 • National Registry of Emergency Medical Technicians (NREMT),
- 24 • National Association of Emergency Medical Services Physicians (NAEMSP)
- 25 • National Association of State Emergency Medical Services Directors (NASEMSD),
- 26 • National Council of State Emergency Medical Services Training Coordinators

27 (NCSEMSTC),

- 28 • National Association of Emergency Medical Technicians (NAEMT)

1 The National Association of EMS Educators (NAEMSE) became a sponsoring organization
2 in 1998. The American College of Osteopathic Emergency Physicians became a sponsoring
3 organization in 2003.

4 The purpose of CECBEMS is:

- 5 • To promote, through continuing education activities, the acquisition of knowledge,
6 attitudes, and skills necessary to maintain competency as an emergency care provider, manager, or
7 educator;
- 8 • To promote availability and accessibility of continuing education activities that enhance
9 the professional development of emergency care providers, managers, or educators;
- 10 • To establish a standardized process for CECBEMS approval of continuing education
11 activities.

12 CECBEMS has developed an excellent reputation throughout the nation as an accrediting
13 agency due to its creation and enforcement of strict standards, rules and policies. As a result, many
14 states accept a student's submission of a course that is CECBEMS accredited.

15 CECBEMS does not provide any education courses. CECBEMS only reviews courses for
16 accreditation purposes.

17 CECBEMS accreditation in California is optional. No course is required to be CECBEMS
18 approved by the state of California. The state of California will and has provided TargetSafety its
19 own approval but would also accept CECBEMS accredited courses.

20 An entity desiring the optional CECBEMS accreditation must comply with CECBEMS' rules
21 and standards.

22 **B. CECBEMS ACCREDITATION PROCESS**

23 All applications for CECBEMS accreditation are submitted to CECBEMS at its office based
24 in Texas.

25 The application undergoes an initial staff review to determine whether the application is
26 complete.

27 CECBEMS staff will then forward a completed application to a panel of three expert
28 reviewers. The panel is made up of a member of the CECBEMS board, a physician and a member of

one of the seven sponsoring organizations. Reviews are conducted under an established set of reviewer guidelines. The criteria for approval are very strict. After the panel of three expert reviewers has completed its review of several topics and is satisfied that the quality is acceptable, the topics are assigned to a single reviewer. If the applicant disagrees with the decision of a single reviewer or a panel of three reviewers, it may appeal to the Chair who distributes the application and the appeal document to the Board of Directors as a whole for a vote.

If any of the three CECBEMS reviewers conclude that the application fails to meet the approval requirements, the application may be forwarded to all voting members of CECBEMS for review and final determination.

Courses with repeated offering are approved for three years (such as those offered by Target Safety).

TargetSafety has submitted several applications for course accreditation to CECBEMS. The specific course which gave rise to this issue was "Infectious Disease Control". A true and accurate copy of the application is attached hereto as **Exhibit A**.

C. CECBEMS ACCREDITATION IS OPTIONAL

TargetSafety made a choice when it applied for accreditation from CECBEMS. TargetSafety chose to comply with the rules, standards and policies of CECBEMS. CECBEMS has made it clear to TargetSafety that an entity may not maintain the optional CECBEMS accreditation and continue to offer non-accredited courses under the same course name. This is simply misleading.

TargetSafety was not required to apply for CECBEMS accreditation. However, once doing so, it must continuously adhere to those standards which CECBEMS, in its professional judgment, deems necessary. Case law is clear that no court may replace its judgment for that of the accreditation agency's expert opinion.

II. TARGETSAFETY'S APPLICATION AND MISLEADING MARKETING VIOLATED CECBEMS' WRITTEN POLICIES

TargetSafety violated CECBEMS' written policy on providing misleading marketing materials.

The application completed by TargetSafety for accreditation violates the terms of the

1 application, which states as follows:

2 SECTION IX – MARKETING MATERIALS

3 The purpose of this section is to verify that marketing materials for this
 4 program provide prospective participants with an accurate description
 5 of this activity. Marketing materials should include an accurate
 6 description of the activity, be free of any statements that are
 7 misleading in any way, give clear directions for accessing the activity,
 8 identify registration fees clearly and contain an accurate CECBEMS
 9 approval statement as follows: *This continuing education activity is*
 10 *approved by the Continuing Education Coordinating Board for*
 11 *Emergency Medical Services (CECBEMS) or Continuing Education*
 12 *Hours have been applied for through the Continuing Education*
 13 *Coordinating Board for Emergency Medical Services (CECBEMS).*

14 Include as Attachment D a draft or final copy of all marketing
 15 materials—brochures, electronic marketing messages or displays, ads
 16 in journals, etc. [emphasis added].

17 In or about April 2007, TargetSafety submitted an application to CECBEMS to have an
 18 Infectious Disease Control course accredited by CECBEMS. In its application, TargetSafety
 19 submitted a “Course Catalog” which states:

20 TargetSafety is in the process of developing a comprehensive EMS
 21 continuing education program... *** The following course catalog
 22 [sic] currently in development. Courses will be rolled out over the next
 23 year as they are completed and approved by CECBEMS. New courses
 24 will automatically be added your library [sic] upon CECBEMS
 25 approval. [emphasis added].

26 CECBEMS therefore believed that only one course catalog existed and that only
 27 CECBEMS’ accredited courses would be offered by TargetSafety. TargetSafety’s Complaint now
 28 references two catalogs. Paragraph 9 of the Complaint references a “Certified EMS Training
 29 catalog” and paragraph 10 references a “full catalog of courses” which presumably includes non-
 30 accredited courses.

31 TargetSafety was required to produce “all marketing materials” in its application and not
 32 just some of them. TargetSafety clearly had two versions of its Course Catalog, and only one was
 33 submitted to CECBEMS. Moreover, the TargetSafety brochure provided in Appendix D states that
 34 “TargetSafety is in the process of developing a comprehensive EMS continuing education
 35 program.” (emphasis added). Nothing in that statement informs the reader that in fact,
 36 TargetSafety was developing two continuing education programs, one being accredited and one not

1 being accredited.

2 In March 2008, an administrator of an emergency medical service in the state of California
3 questioned the validity of a course completion certificate which was given to her by TargetSafety.
4 She was a student of TargetSafety's Infectious Disease Control course. The course certificate did
5 not bear CECBEMS' statement of accreditation. She confirmed that TargetSafety was listed as an
6 accredited provider on CECBEMS' website. She was confused because she thought that she had
7 completed a CECBEMS approved course.

8 Executive Director Liz Sibley from CECBEMS questioned TargetSafety's staff on the
9 validity of this certificate. Ms. Sibley was informed that TargetSafety offers a non-CECBEMS
10 accredited version of the Infectious Disease Control Course under the same title. This practice is
11 not permitted by CECBEMS and already has proven misleading to students.

12 As an administrator/student (the same person) was actually mislead and as CECBEMS was
13 actually mislead, there is no question that TargetSafety's marketing materials were misleading, in
14 violation of the application's prohibition against misleading marketing materials.

15 TargetSafety also failed to include in Appendix D any reference to its website marketing
16 and violated the application's demands for disclosure. Thus, reviewers would not have looked to
17 TargetSafety's website for marketing material.

18 Even if a reviewer had realized that TargetSafety improperly failed to include its website in
19 its Attachment D of marketing materials, there is simply nothing on the website which provides any
20 clear indication that some courses with the exact same title are accredited and some are not.

21 A view of the TargetSafety website reveals the following statement (the website is located
22 at: <http://www.targetsafety.com/newsite/who/ems.htm>):

23 Emergency Medical Services

24 PreventionLink offers over 60 hours of online **EMS continuing**
25 **education**. Our courses allow EMT-Basic, Intermediate, Paramedic,
26 ECA or First Responders to complete their continuing education
requirements, when and where they have time in an engaging and
easy-to-use format.

27 TargetSafety is in the process of obtaining approval by the **Continuing**
28 **Education Coordinating Board for Emergency Medical Services**
(CECBEMS). Please contact us for more information on our

CECBEMS-approved content. [emphasis in original].

If a viewer was to view courses at the "California page" on the TargetSafety website, it would find no disclaimer that the California courses were not approved by CECBEMS. Thus, a viewer would believe that the California courses are CECBEMS approved.

The application requests the reviewer to determine whether the materials contain a "misleading" statement. In CECBEMS' expert opinion, the failure of TargetSafety to submit both Course Catalogs is misleading. The website is also misleading, as it provides the impression that all courses are CECBEMS' approved.

TargetSafety has recently represented to CECBEMS that it does not offer its CECBEMS version of the courses in California, and thus there is no confusion. CECBEMS has recently discovered that TargetSafety has represented to the Orange County Fire Authority that it does offer CECBEMS accredited courses in California. Attached as **Exhibit B** to this document is a true and accurate copy of a portion of a proposal to the Orange County Fire Authority.

On the second page of the document, at paragraph 6, TargetSafety represented to the Orange County Fire Authority, in pertinent part:

TargetSafety can provide up to 100% of all CE's for EMT's –
TargetSafety is one of two vendors in the state that can provide 100%
of the CE's online if necessary for EMT's and paramedics.
TargetSafety is CECBEMS approved and CA State approved for EMS
CE's....

TargetSafety further represented in this application, under the heading "EMS Training – California State (Instructor-led) and CECBEMS Approved" that "TargetSafety now offers CECBEMS approved online EMS training."

TargetSafety has thus represented that in California it offers two versions of the same course, being an accredited and non-accredited version. CECBEMS' concern that offering two courses will create confusion is real.

III. TARGETSAFETY'S MISLEADING MARKETING MATERIALS AND WEBSITE MUST BE CURED

The confusion caused by TargetSafety must be cured in order to preserve the integrity of the accreditation process and the integrity of the CECBEMS accreditation. Although not required to do

1 so, many states rely on the integrity of CECBEMS as do thousands of emergency medical service
2 providers who use CECBEMS accredited courses for recertification.

3 CECBEMS believes that the website and TargetSafety's application gives the impression
4 that all TargetSafety courses are approved by CECBEMS, when in fact, they are not. Worse, the
5 use of the same name for an accredited and non-accredited course leads to confusion and could
6 ultimately lead to the denial of recertification for an emergency medical service provider.

7 Upon information and belief from TargetSafety's Complaint (paragraph 9) one third of their
8 courses do not meet CECBEMS' accreditation standards. Therefore, courses which appear to be
9 CECBEMS approved, such as all of those on the California website, simply do not meet
10 CECBEMS' high standards. Indeed TargetSafety admits that the approved and non-approved
11 versions use "a different testing methodology and different test questions than the CECBEMS
12 approved version of the course" (Complaint at paragraph 11).

13 CECBEMS, in its capacity as a professional in the emergency medical service accreditation
14 field, has deemed TargetSafety's practice as completely improper and dangerous. It is not
15 permitted by CECBEMS and poses a significant threat to the students completing TargetSafety's
16 courses. Students may be and have already been mislead into believing that they are taking a
17 CECBEMS accredited course instead of completing a non-CECBEMS accredited course under the
18 same title.

19 Clearly, the EMS administrator thought that the TargetSafety courses in California were all
20 approved by CECBEMS and therefore believed that the certificate submitted to her was fraudulent,
21 as it lacked the CECBEMS required statements.

22 CECBEMS' reputation as an accrediting agency would be greatly diminished if it continued
23 to permit the improper use of CECBEMS' accreditation on a website or marketing materials which
24 mislead students to think that all courses are approved by CECBEMS when such courses do not
25 meet the accreditation standards.

26 CECBEMS' demand that TargetSafety take curative action regarding its marketing
27 materials and website is reasonable and necessary to uphold the sanctity of accreditation. Again,
28 however, only a demand has been made and no revocation has been approved.

1 IV. THE REQUEST FOR AN INJUNCTION IS PREMATURE

2 The Board of Directors of CECBEMS is vested with the authority to decide whether or not
3 to revoke accreditation. As of this date, the Board has neither been presented with nor approved a
4 resolution to revoke or rescind the accreditation of TargetSafety or any individual course offered by
5 TargetSafety. The issue therefore, is not ripe for review.

6 The Complaint correctly alleges that all CECBEMS has done to date was “threatening to
7 revoke its accreditation” (Complaint, paragraph 15). A threat is not sufficient to warrant this
8 Court’s interference at this time, as there has not even been a vote of the Board of Directors.

9 TargetSafety’s April 25, 2008 letter to CECBEMS made it clear that TargetSafety was
10 “certainly not aware of any such vote” of the CECBEMS Board of Directors. Indeed, CECBEMS
11 never indicated to TargetSafety that a decision had already been made to revoke but simply that if
12 TargetSafety did not “come into compliance within 60 days” the accreditation would be withdrawn.
13 As recognized by TargetSafety, revocation would and still does require a vote of the Board of
14 Directors.

15 CECBEMS “Appeal Process” (Exhibit 3 to Plaintiff’s Verified Complaint), though
16 misleading in name, had been initiated by CECBEMS. Step one requires CECBEMS to provide
17 notification of a complaint to Target Safety. Step two requires a response by TargetSafety to
18 CECBEMS.

19 TargetSafety’s action came before the initiation of step 3, which had not yet been initiated
20 by CECBEMS. Step three requires CECBEMS, “within 30 days from the mailing date of the
21 noncompliance notice if no response is received from the contact person of the sponsoring
22 organization, the CECBEMS Chairperson shall notify the contact person of the sponsoring
23 organization in writing, by certified mail, of one of the following:”

24 CECBEMS’ Board of Directors had not yet voted on any of the four options (“a” through
25 “d”) contained in section 3 or had the chance to notify TargetSafety of such decision.

26 Paragraph 3(d) of the policy requires that if CECBEMS chooses, as one of the four options,
27 to revoke the accreditation of TargetSafety, that CECBEMS shall notify TargetSafety of the
28 “Decision to revoke the accreditation, including the effective date of the revocation, which may not

1 be less than 60 days from the date of the letter of decision from the CECBEMS Chairperson”.

2 TargetSafety would have at least sixty days therefore, to initiate a court appeal of any
3 decision of CECBEMS.

4 The request for a preliminary injunction and/or temporary restraining order is simply
5 premature and not yet ripe. Simply receiving a complaint from CECBEMS with demands to cure
6 does not rise to the level of harm required for court review.

7 Federal courts may only review whether decisions of accrediting institutions were “arbitrary
8 and unreasonable” and whether they were supported by substantial evidence. There is no
9 jurisdiction to review decisions that have not yet been made, and which in fact may never be made.

10 The federal courts must give “great deference” to the determinations of accrediting
11 agencies, as “[t]he standards of accreditation are not guides for the layman but for professionals in
12 the field of education” *Wilfred Academy of Hair and Beauty Culture, Houston, Tex. V. Southern*
13 *Ass’n of Colleges and Schools*, 957 F.2d 210 (5th Cir. 1992) *citing Parsons College v. North Cent.*
14 *Ass’n of College and Secondary Sch.*, 271 F.Supp 65, 73 (N.D.Ill 1967).

15 This Court may not preempt or predetermine any future decision of the CECBEMS Board
16 of Directors.

17 Nor should the Court be asked to speculate as to the reasonableness of the decision to
18 revoke or not to revoke, as the Court cannot yet weigh the Board’s reasons for such revocation or
19 the factual basis of any such potential decision. Such would be tantamount to providing an
20 advisory opinion.

21 **V. TARGETSAFETY HAS FAILED TO EXHAUST ITS ADMINISTRATIVE** 22 **REMEDIES**

23 Should TargetSafety’s accreditation be revoked by vote of the Board of Directors, the
24 “Appeal Process” policy requires that the decision not become effective for at least sixty days after
25 TargetSafety is notified. The policy is designed to provide time for a court appeal of CECBEMS’
26 decision.

27 TargetSafety has not, therefore, exhausted its administrative remedies with regard to this
28 matter and the matter is simply not ripe for judicial review.

VI. TARGETSAFETY'S ALLEGED HARM IS NOT IRREPARABLE AS MONETARY RELIEF IS AVAILABLE

The Ninth Circuit has held that where monetary relief is available to a Plaintiff, the harm alleged to be suffered is generally not irreparable. Here, if and when CECBEMS revokes the accreditation of a course offered by TargetSafety, and if such revocation were found to be impermissible, then TargetSafety could be made whole through the recompense of monetary damages.

TargetSafety alleges that it would lose the ability to offer courses in certain states without CECBEMS accreditation. TargetSafety would be able to demonstrate the number of course completions in these states which would be lost without CECBEMS accreditation.

As monetary relief is both calculable and could be available, the harm is not irreparable. Indeed, TargetSafety has requested compensatory damages in its Complaint.

Injunctive relief is not appropriate.

VII. TARGETSAFETY WILL NOT SUFFER IRREPARABLE HARM IF ACCREDITATION IS REVOKED

TargetSafety's Complaint (paragraph 15) alleges that the loss of CECBEMS accreditation would prevent TargetSafety from offering courses in possibly one unidentified geographic area. The complaint is too vague to determine whether the area is a town, village, city, state or territory. Unquestionably, it is not in California.

The complaint (paragraph 15) alleges that "TargetSafety is informed and believes that at least one medical director has told TargetSafety that he will not permit TargetSafety to offer courses unless the courses are CECBEMS accredited".

TargetSafety does not identify the person that spoke with that unidentified medical director, the medical director itself, or the geographic area in which the medical director oversees.

TargetSafety has not alleged that it has any customers willing to take its courses in that unnamed medical director's unspecified geographic area.

This vague, double hearsay is not a sufficient or admissible basis upon which to grant injunctive relief against CECBEMS. Nor does this unverified claim give rise to harm sufficient for

1 the Court to determine that the loss of CECBEMS accreditation would cause irreparable harm to
2 TargetSafety.

3 TargetSafety also has failed to submit any evidence in admissible form that revocation of
4 CECBEMS accreditation would result in the loss of its ability to offer those courses in any state.
5 Indeed, TargetSafety has not even alleged that any state would withdraw TargetSafety's ability to
6 offer a course in any state if it were to lose CECBEMS accreditation.

7 TargetSafety has failed to identify which states accept only CECBEMS accreditation and
8 has failed to further identify its revenue in such states and the potential loss of revenue in those
9 states.

10 TargetSafety claims that "In 16 states, CECBEMS... has been granted the sole authority to
11 accredit on line courses for the state-mandated continuing education requirements of emergency
12 medical care professionals." (TargetSafety's Memorandum of Law, p. 1). TargetSafety fails to
13 identify any specific state.

14 **VIII. THE "WHEREFORE" CLAUSE SEEKS RELIEF WHICH IS OVERBROAD,**
15 **UNREASONABLE AND UNNECESSARY**

16 TargetSafety's request for injunctive relief is simply too broad.

17 TargetSafety, in Paragraph 3 of the Wherefore clause to the Complaint requests:

18 a temporary restraining order, preliminary injunction and permanent
19 injunction (a) restraining CECBEMS and any persons, or entities
20 working in concert with them, from revoking Plaintiff's accreditation,
and (b) requiring CECBEMS to follow its own appellate process in a
manner consistent with the law

21 This injunctive relief must be denied pursuant to federal common law. It is axiomatic that
22 no court may interfere with the reasonable professional judgment of either an accrediting agency or
23 a not for profit corporation.

24 If granted, part (a) of this relief would prohibit CECBEMS from ever enforcing its rules,
25 policies and standards which were implemented to keep the accreditation process trustworthy and
26 credible. TargetSafety would be given a license to violate any rule, policy or standard of
27 CECBEMS and CECBEMS could not revoke as a result of the injunction.

28 TargetSafety's CECBEMS' accreditation would also become permanent, a benefit not held

1 by any CECBEMS accredited agency. TargetSafety's accreditation for each course must be
 2 renewed after a three (3) year period. Injunctive relief would effectively force CECBEMS to renew
 3 accreditation of each of TargetSafety's courses, even if the course material had become outdated,
 4 inaccurate or otherwise failed to meet the accreditation standards in place at the time of the
 5 renewal.

6 It is important to state that TargetSafety has refused to submit to an audit as demanded by
 7 CECBEMS and as required of TargetSafety by the terms of the application for accreditation at
 8 Appendix XV, paragraph 4(c), as also required Appendix "Instructions for Submission" (see note
 9 following paragraph 7), and as also required at Appendix Section VIII "Maintenance of Records"
 10 (see note: "This information must be provided for audit purposes at CECBEMS request").

11 Broad injunctive relief will permit TargetSafety to continue to violate the standards of
 12 accreditation by refusing to comply with CECBEMS' demands for information.

13 **IX. THE THIRD CAUSE OF ACTION SEEKS RELIEF WHICH IS OVERBROAD,**
 14 **UNREASONABLE AND UNNECESSARY**

15 TargetSafety's Third Cause of Action seeks an order granting three injunctions:

16 compelling CECBEMS to specifically perform the parties agreement
 17 and to continue to provide TargetSafety with CECBEMS accreditation
 18 with respect to those courses that have already been accredited by
 19 CECBEMS and to provide TargetSafety with CECBEMS accreditation
 20 with respect to courses that are already under application with
 21 CECBEMS or courses which TargetSafety will submit to CECBEMS
 22 for accreditation so long as the content of those courses meets with
 23 CECBEMS accreditation process. [Complaint paragraph 29].

24 As stated above, an injunction granting a permanent accreditation status would permit
 25 TargetSafety to refuse to comply with any former or new accreditation standards, rules or
 26 requirements. This request is simply unreasonable. All accredited agencies must be subject to the
 27 standards, rules and requirements of CECBEMS.

28 With regard to an injunction requiring CECBEMS to accredit all pending courses and
 courses submitted in the future, this request asks the Court to stand in the shoes of the accrediting
 agency and take away any professional judgment of CECBEMS. This very request would
 jeopardize the sanctity of the accreditation process.

Further, accreditation requires more than simply the content of the courses meeting the

CECBEMS accreditation process. Accreditation requires initial and continuous compliance with all standards, rules and requirements of CECBEMS.

Accredited agencies are also required to submit to audits by CECBEMS. TargetSafety has already failed to do so and injunctive relief would permit further violations by TargetSafety.

X. THE FOURTH CAUSE OF ACTION SEEKS RELIEF WHICH IS OVERBROAD, UNREASONABLE AND UNNECESSARY

TargetSafety's Fourth Cause of Action seeks an injunction requiring CECBEMS to follow its own "appeals" process. CECBEMS was in the midst of such process and had not yet had a chance to vote on anything before this action was filed. Such an injunction is unnecessary, as CECBEMS is still in the midst of the "appeals" process.

If the CECBEMS Board of Directors does vote to revoke CECBEMS accreditation for the Infectious Disease Course, revocation will not be effectuated until the "appeals" process is completed. Court review of CECBEMS' compliance with its procedures would then be ripe for judicial review, and the revocation would be stayed pursuant to CECBEMS' policy for sixty days.

XI. CECBEMS HAS CAUSE TO REVOKE, SHOULD IT VOTE TO DO SO

Section XV of the application for accreditation ("Assurances and Certifications") for the Infectious Disease Control course (and all courses) required TargetSafety to agree that the accredited courses "will be offered in compliance with each of the following requirements", including the "Policy for the Denial, Suspension, or Revocation of CECBEMS Accreditation."

Paragraph 4 of Section XV provides that "The activity sponsor understands that revocation of approval may result if the application fails to comply with CECBEMS policies and procedures". Although the list is not exhaustive by its terms, paragraph 4(c) provides as a reason for revocation "Failure to provide CECBEMS with information necessary for CECBEMS to perform a random audit".

Additionally, the "Instructions for Submission" (see note following paragraph 7), and the Appendix at Section VIII "Maintenance of Records" (see note: "This information must be provided for audit purposes at CECBEMS request") also require submissions to audits.

An audit of records was requested by CECBEMS in its May 14, 2008 letter to TargetSafety

1 requesting "course completions for all students completing any version of the CECBEMS'
2 accredited titles to the CECBEMS' database". The May 14, 2008 letter also demands an audit of
3 other items, such as "a list of all states in which TargetSafety is offering the non-CECBEMS
4 accredited version of any course titles".

5 This independent cause for revocation arose after the initial issue appeared and was
6 addressed in the April 11, 2008 letter from CECBEMS to TargetSafety.

7 The reasons for revocation might also reasonably include the misrepresentation in
8 TargetSafety's application. The Appendix to the CECBEMS application under Section IX
9 (Marketing Materials) states, in pertinent part:

10 The purpose of this section is to verify that marketing materials for this
11 program provide prospective participants with an accurate description
12 of this activity. Marketing materials should include an accurate
description of the activity, be free of any statements that are
misleading in any way....[emphasis added]

13 TargetSafety provided a "Course Catalog" in its application addressing Section IX of the
14 Appendix.

15 The advertisement states "The following course catalog currently in development. Courses
16 will be rolled out over the next year as they are completed and approved by CECBEMS. New
17 courses will automatically be added [to] your library upon CECBEMS approval."

18 Such statement provided CECBEMS with the clear impression that all courses provided by
19 TargetSafety under one title will be approved by CECBEMS.

20 The course catalog was represented as the complete catalog. Nothing in the course catalog
21 suggested to any CECBEMS reviewer that there were any other courses offered, including a
22 California version of a course under the same name which was not CECBEMS accredited.

23 The course catalog represents a material misrepresentation that would justify revocation by
24 the Board of Directors. At the very least, the misleading information must be corrected by
25 TargetSafety, which to date it has refused to do.

26 CECBEMS would never have granted accreditation to TargetSafety had it been made aware
27 that TargetSafety would offer non-accredited versions of an accredited course under the same name
28 and without any disclaimers that non-accredited versions are offered.

1 An additional reason for revoking accreditation could include TargetSafety's misleading
 2 website, which gives a viewer the impression that all courses are CECBEMS accredited and makes
 3 no disclaimer that courses in certain states such as California are not CECBEMS approved.

4 TargetSafety mistakenly asserts that the only reasons for revocation of accreditation is for
 5 "any evidence of fraud, deception or impropriety". Although the "Policy for the Denial,
 6 Suspension, or Revocation of CECBEMS Accreditation" provides CECBEMS with an additional
 7 reason for revocation, the policy is not the only basis for revocation. Indeed, as stated above, the
 8 failure to submit to an audit is also a cause for revocation.

9 Of course, the CECBEMS Board of Directors could interpret the terms "deception or
 10 impropriety" to include the misleading advertising.

11 **XII. TARGETSAFETY FAILED TO MAKE ANY EFFORTS TO RESOLVE THE**
 12 **MATTER PRIOR TO JUNE 11, 2008**

13 The supposed urgency of this application was created entirely by TargetSafety.
 14 TargetSafety was provided sixty (60) days to come into compliance with CECBEMS' demands.
 15 CECBEMS' demands were intended to protect the integrity of the accreditation process by
 16 prohibiting offering an accredited and non-accredited version of the same course under the same
 17 title.

18 Instead of taking any actions to indicate to CECBEMS that TargetSafety intended to correct
 19 the problems, TargetSafety engaged in a war of words. TargetSafety wholly failed to respond to
 20 demands for information (i.e., audit), failed to submit even a plan of correction and failed to make
 21 any changes as required by CECBEMS. Instead, TargetSafety rushed to court to attempt to obtain
 22 by improper judicial fiat what was unavailable to them by compliance with the standards of
 23 accreditation.

24 TargetSafety could have simply responded to CECBEMS' requests for information or
 25 simply submitted a plan of correction to prevent a vote from being taken by the Board of Directors.
 26 TargetSafety violated its agreement with CECBEMS by not submitting the audit results. This
 27 alone is cause for revocation as specifically stated in the application for accreditation, Section
 28 Appendix XV, paragraph 4(c), as also required Appendix "Instructions for Submission" (see note

1 following paragraph 7), and as also required at Appendix Section VIII "Maintenance of Records"
2 (see note: "This information must be provided for audit purposes at CECBEMS request").

3 Respondent respectfully requests that the Court deny TargetSafety's request for temporary,
4 preliminary and permanent injunctive relief.

5 Dated: August 8, 2008

DUANE MORRIS LLP

6
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DECLARATION OF SERVICE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Case Name: *Targetsafety.com, Inc. v. CECBEMS, Inc.*
Case No.: 08-CV-0994 JLS (JMA)

I am a resident of the state of California, I am over the age of 18 years, and I am not a party to this lawsuit. My business address is 101 West Broadway, Suite 900, San Diego, California 92101. On the date listed below, I served the document(s) entitled:

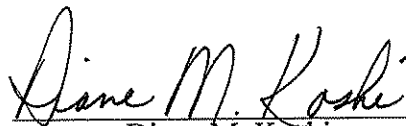
**MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO
MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY
RESTRAINING ORDER**

☒ via electronic service to the attorneys of record on file with the U.S. District Court for this case, as follows:

Frank L. Tobin, Esq. Attorneys for Plaintiff
Mathieu G. Blackston
Procopio, Cory, Hargreaves & Savitch LLP
530 B Street, Suite 2100
San Diego, CA 92101
Phone: 619-238-1900
Fax: 619-235-0398

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed August 8, 2008, at San Diego, California.


Diane M. Koski